

**Title 17, California Code of Regulations, Division 1, Chapter 6  
Childhood Lead Poisoning Prevention Fees**

(1) Amend Section 33007 to read:

**§33007. Department.**

“Department” means the ~~State~~ California Department of Public Health Services.

NOTE: Authority cited: Section 105310 and 131200, Health and Safety Code.

Reference: Sections 105310, ~~and 124165, 131050, 131051, and 131052~~, Health and Safety Code.

(2) Amend Section 33010 to read:

**§33010. Historically Associated.**

"Historically Associated" means that the business entity has a significant relationship to another business entity, such as a business entity which:

(a) Is the alter ego, successor, successor-in-interest, or predecessor, in full or part, of another business entity;

(b) Purchased controlling or significant interest in another business entity;

(c) Exists by way of incorporation of a privately held business entity;

(d) Exists by way of a merger, consolidation, or reorganization of another business entity;

(e) Acquired the products of another business entity, unless the business entity from which the products were acquired is assessed a fee for the same products;

(f) Acquired a trademark or the goodwill of another business entity, unless the business entity from which the trademark or the goodwill was acquired is assessed a fee for the same products.

(g) Acquired significant operating assets from another business entity, including, but not limited to, acquisition of substantially all of a means of production, such as a factory or refinery.

NOTE: Authority cited: Section 105310 and 131200, Health and Safety Code; Ch. 799, Stats. 1991, Sec. 11.

Reference: Sections 105310, ~~and~~ 124165, [131050](#), 131051, and 131052, Health and Safety Code.

(3) Amend Section 33020 to read:

**§33020. Fees Attributable to Leaded Architectural Coatings.**

(a) Each architectural coating distributor shall pay a fee assessed and collected by the Board of Equalization pursuant to Health and Safety Code section 105310 and calculated as follows:

$$\frac{A}{B} \times D$$

WHERE:

A = Total gallons of architectural coatings distributed in or about 1978 by each architectural coatings distributor, as estimated by the Department based upon the best available data compiled and held by the Department.

The estimate of each architectural coating distributor's 1978 distributions shall include the Department's estimate of the total gallons of architectural coating products distributed in 1978 from any and all business operations for which the architectural coating distributor is currently responsible, including by historical association as determined by the Department pursuant to section 33060.

B = Total gallons of architectural coating distributed in or about 1978 by all architectural coating distributors, as estimated by the Department based upon the best available data compiled and held by the Department.

D = \$2,260,000.00 + the annual adjustment pursuant to Health and Safety Code section 105310(c).

(b) The fee is due on or before April 1 of each year.

NOTE: Authority cited: Sections 105310 and 131200, Health and Safety Code; Ch. 799, Stats. 1991, Sec. 11.

Reference: Sections 105310, ~~and~~ 124165, [131050](#), [131051](#) and [131052](#), Health and Safety Code.

(4) Amend Section 33025 to read:

**§33025. Fees Attributable to Leaded Gasoline.**

(a) Each motor vehicle fuel distributor shall pay a fee, assessed and collected annually by the Board of Equalization pursuant to Health and Safety Code section 105310 and calculated as follows:

$$\frac{A}{B} \times D$$

WHERE:

A = Total gallons of motor vehicle fuel distributed in or about 1991 by each motor vehicle fuel distributor, as estimated by the Department based upon the best available data compiled and held by the Department.

The estimate of each motor vehicle fuel distributor's 1991 distributions shall include the Department's estimate of the total gallons of motor vehicle fuel distributed in 1991 from any and all business operations for which the motor vehicle fuel distributor is currently responsible, including by historical association as determined by the Department pursuant to section 33060.

B = Total gallons of motor vehicle fuel distributed in or about 1991 by all motor vehicle fuel distributors, as estimated by the Department based upon the best available data compiled and held by the Department.

D = \$13,640,000.00 + the annual adjustment pursuant to Health and Safety Code section 105310(c).

(b) The fee is due on or before April 1 of each year.

NOTE: Authority cited: Sections 105310 and 131200, Health and Safety Code; Ch. 799, Stats. 1991, Sec. 11.

Reference: Sections 105310, ~~and~~ 124165, [131050](#), [131051](#) and [131052](#), Health and Safety Code.

(5) Amend Section 33030 to read:

**§33030. Fees Attributable to Facilities Releasing Lead into Ambient Air in California.**

(a) Facilities ~~currently reporting~~ that have reported releases of lead or lead compounds into ambient air in California pursuant to the Superfund Amendments and Reauthorization Act, Title III, Section 313, shall pay a fee, assessed by the Board of Equalization pursuant to Health and Safety Code section 105310 and calculated as follows:

$$\frac{A}{B} \times C$$

WHERE:

A = The total pounds of lead and lead compounds reported to be released by each facility into the California ambient air in the most recent calendar year for which data are available, as reported pursuant to the Superfund Amendments and Reauthorization Act, Title III, Section 313.

B = The total pounds of lead and lead compounds reported to be released by all facilities into California ambient air in the most recent calendar year for which data are available, as reported pursuant to the Superfund Amendments and Reauthorization Act, Title III, Section 313.

C = \$100,000 + the annual adjustment pursuant to Health and Safety Code section 105310(c).

(b) The fee is due on or before April 1 of each year.

NOTE: Authority cited: Sections 105310 and 131200, Health and Safety Code; Ch. 799, Stats. 1991, Sec. 11.

Reference: Sections 105310, ~~and~~ 124165, [131050](#), [131051](#) and [131052](#), Health and Safety Code.

(6) Amend Section 33040 to read:

**§33040. Exemption From Fees.**

(a) An exemption from the fee imposed under Health and Safety Code section 105310 shall be granted to an applicant who can demonstrate, as determined by the Department, that all of the following are true:

(1) The industry with which the applicant is associated is not currently engaged in the stream of commerce of lead or products containing lead;

(2) The industry with which the applicant is associated was not historically engaged in the stream of commerce of lead or products containing lead;

(3) The industry with which the applicant is associated is not otherwise responsible for identifiable sources of lead which currently contribute to environmental lead contamination;

(4) The industry with which the applicant is associated is not otherwise responsible for identifiable sources of lead which have historically contributed to environmental lead contamination.

(b) An applicant who does not seek or who fails to demonstrate entitlement to an exemption under subsection (a) shall qualify for an exemption if the applicant can demonstrate, as determined by the Department, that either:

(1) The applicant's industry did not contribute in any manner to environmental lead contamination, or

(2) The applicant's lead, or products containing lead, with which the applicant is currently, or was historically, associated does not currently, or did not historically, result in environmental lead contamination.

(c) It shall be presumed that the applicant is subject to the fee until the applicant establishes the contrary to the satisfaction of the Department. The presumption may be rebutted by providing a complete application and any other documentation that the Department requires to establish the applicant's entitlement to the exemption. Contents of an application shall include, but are not limited to:

(1) A thorough statement, made under penalty of perjury, which demonstrates the applicant's entitlement to the exemption. The sworn statement shall also contain the declarant's basis of knowledge for making the statements contained therein. If the person making the statement is not reasonably available to the applicant, a certified copy of a transcript of sworn testimony may be submitted. If such prior sworn testimony is used, the applicant must also provide a declaration as to why the declarant is not available. More than one statement may be submitted when necessary to prove the elements of the exemption.

(2) Records providing the information specified below shall be submitted in duplicate with a sworn statement under penalty of perjury establishing the reliability and completeness of the records, including a description of their mode of preparation and maintenance:

(A) The formulation for all products manufactured and all products sold by the applicant, including the International Union of Pure and Applied Chemical (IUPAC) name and Chemical Abstract Service (CAS) number for all ingredients used;

(B) The total amount of lead manufactured, distributed, and sold each year in the applicant's products;

(C) Any actions taken by the applicant to abate the lead dispersed into the environment by the applicant's products in accordance with Title 17, California Code of Regulations, Division 1, Chapter 8, section 35001 et seq;

~~(D) Each business entity from whom the applicant purchased lead pigments, lead dryers, and any other lead-containing ingredients used to manufacture the applicant's products, including name, address, contact name, phone number, type of lead-containing ingredient, total amount of lead-containing ingredients purchased, and year purchased;~~

~~(E)~~(D) Any records, or portion thereof, which the applicant wants to protect as a trade secret shall be submitted in a separate sealed envelope clearly marked on the outside as "Trade Secret Material." For purposes of this section, "trade secret" shall have the same meaning as in the Uniform Trade Secrets Act, Civil Code section 3426 et seq. The application shall contain a declaration under penalty of perjury describing why the applicant believes the material is a trade secret. After review, the Department will either grant the trade secret request and keep the material confidential, or deny the request,

return all copies of the trade secret material to the applicant, and not consider the trade secret material in its determination. The Department's refusal to grant a requested claim of trade secret does not excuse the applicant from establishing all elements of the claim for exemption. Any material which the Department agrees to consider as a trade secret shall be exempt from disclosure under the Public Records Act, Government Code section 6250 et seq. Records for which the Department has denied protection as a trade secret shall also be exempt from disclosure under the Public Records Act during the time the records are in the possession of the Department.

(3) A cover letter containing the name and address of the applicant, the applicant's Board of Equalization account number, the name, address and telephone number of the person to contact about the application, a summary of the basis for the exemption, and a listing of all items included with the application.

(d) The application shall be delivered to the Department at the following address:

Fee Exemption Request  
Childhood Lead Poisoning Prevention Branch  
Department of ~~Health Services~~ Public Health  
~~1515 Clay Street #1801~~  
~~Oakland, CA 94612~~  
850 Marina Bay Parkway, Building P, Third Floor  
Richmond, CA 94804-6403

(e) An exemption granted under this section is valid for a period specified by the Department of at least one calendar year. The Department may reexamine an exemption if the facts underlying the applicant's basis for exemption have changed or issues arise regarding the appropriateness of the exemption.

~~(f) A business entity seeking to continue an exemption under this section shall re-apply to the Department at least 30 days prior to the end of the period specified by the Department pursuant to section 33040(e).~~

~~(1) If the facts underlying the business entity's previous application for exemption have not changed, then an application for continued exemption shall consist of a sworn declaration stating there has been no change and the declarant's basis of knowledge for making such statement.~~



~~(2) If there has been a change in the facts underlying the business entity's previous application for exemption, then a sworn declaration shall address in detail the nature of the changes. In addition, the application for continued exemption shall include records proving the applicant's entitlement for the exemption, as specified in section 33040(c)(2).~~

~~(g)(f)~~ The Department may, in its sole discretion, decide the application for exemption ~~or continued exemption~~ based upon the information submitted, or may request the submission of additional information prior to making a written decision. If the applicant does not provide the additional material requested by the Department, then the Department may decide the matter based upon the material already presented.

~~(h)(g)~~ The Department shall either grant or deny the exemption ~~or continued exemption~~.

(1) If the application for exemption ~~or continued exemption~~ is denied, the applicant may, within 30 days after receipt of the Department's written decision, request reconsideration of the decision from the Department. The request for reconsideration shall be in writing, and shall detail the reasons why the applicant believes the original decision was in error.

(2) The Department may decide the matter based upon the record submitted in the application, or may request the submission of additional information. The Department's decision on the reconsideration shall be in writing, and shall either grant the exemption ~~or continued exemption~~, or specify the reasons for its denial.

~~(i)(h)~~ An applicant who has paid the fee, and thereafter been granted an exemption by the Department, may apply for a refund to the Board of Equalization. The request for a refund must be in writing and mailed to:

State Board of Equalization  
Fuel Taxes Division, MIC: 30  
P.O. Box 942879  
Sacramento, CA 94279-0001

NOTE: Authority cited: Section 105310 and 131200, Health and Safety Code; Ch. 799, Stats. 1991, Sec. 11.

Reference: Sections 105250, 105310, 124160(b), and 124165, [131050](#), 131051, and 131052, Health and Safety Code.

(7) Adopt Section 33060 to read:

**§33060. Transfer of Operating Assets.**

(a) When an assessed business entity sells or transfers some or all of its operating assets to another business entity the Department will determine whether an historical association has been established between the two business entities. The Department will make a determination based upon the best available information compiled and held by the Department, without regard to whether an application has been filed by any party pursuant to section 33060(b). If an historical association has been established, then the acquiring business entity shall be responsible for the fee for the historic activity of the acquired business operations, beginning with the fee for the calendar year in which the operating assets were acquired.

(b) A party may file an application with the Department seeking a determination under section 33060(a), including an application seeking reconsideration of a determination already made by the Department under section 33060(a). An application filed under this section shall include:

(1) A brief statement, made under penalty of perjury, describing the business operations and business entities in question and stating the basis of the application;

(2) A copy of relevant portions of the purchase and sale agreement that would identify what assets were sold, when the assets were sold, and to whom the assets were sold;

(3) Any other documentation that would demonstrate a transfer of ownership of the operating assets, or otherwise support the stated basis of the application.

(c) If the application is denied, the applicant may, within 30 days after receipt of the Department's written decision, request reconsideration of the decision from the Department. The request for reconsideration shall be in writing, and shall detail the reasons why the applicant believes the original decision was in error.

NOTE: Authority cited: Section 105310 and 131200, Health and Safety Code; Ch. 799, Stats. 1991, Sec. 11.

Reference: Sections 105250, 105310, 124160(b), and 124165, [131050](#), [131051](#), and [131052](#), Health and Safety Code.